HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION NO. 3151 OF 2006.
IN
FIRST APPEAL NO. 751 OF 2003.

Digvijay Graha Rachana Mandal & Anr. ..Applicants.
Versus.
The State of Maharashtra & Ors. ..Respondents.

Shri. A. V. Anturkar i/b Sandeep S. Salunkhe for the applicant.
Shri. B. H. Mehta, A.G.P. for the respondent nos. 1 & 2.

CORAM: S.B.MHASE &
S.R.SATHE JJ

DATE: JULY 17, 2006.

P.C.

1. Heard. This is civil application seeking amendment in cause title of the reference and appeal memo. Applicant is Digvijay Graha Rachana Mandal which is represented by its President - Mainuddin Chand Saheb Shaikh. It is stated in the reference that the said society is a proposed society. This means that on the date of acquisition and on the date of reference, the Digvijay Graha Rachana Mandal was not a registered society and so called President -Mainuddin Chand Saheb Shaikh was the Chief Promoter of the proposed society. Under these circumstances, the land of the said society has been acquired. Since it is an unregistered body, the land reference should have been filed by the name of the proposed society along with all the members of

the said society, and if someone of them was not available, he should have been shown as opponent. However, the land reference continued in the name of the proposed society and it was decided. This defect was noted while hearing the appeal. The law requires that the person approaching the Court shall be a legal entity and Digvijay Graha Rachana Mandal will be a legal entity when it is registered under the Maharashtra Co-operative Societies Act or any other Act/Rules since it is not registered it is an unregistered association. Therefore, all the members of the said unregistered association are required to be before this Court. By this application, appellant no.1 discloses the names of the persons who are members of the said society and has requested this Court to make them party to the present First Appeal and add them in cause-title of the reference and equally in appeal memo.

2. Shri. B. H. Mehta, A.G.P. appearing for the respondent nos. 1 & 2 vehemently opposed for such an inclusion. He submitted that this is the inherent defect in the reference and that cannot be cured by such civil application and opposed the civil application.

3. We are not impressed by this submission made by the learned A.G.P. for the State. Basically, the State of Maharashtra has passed an award in the name of the proposed society when they were knowing that it was a proposed society, they were under an obligation to disclose the names of the persons who are the members of the proposed society and in stead of doing that they passed the award. Not only that but when this fact was disclosed in paragraph 2 in award, at no point of time, the State objected for filing of such a reference. There are no cross objections as on today also.

4. By this amendment no separate or new cause of action is being introduced. It is a technical amendment so as to correct the names and status of the litigating parties. First Appeal is a continuation of the said land reference which was filed before the trial Court. Under these circumstances, civil application is allowed. Applicant is hereby allowed to include the names as stated in paragraph 1 of the application as the persons preferring the reference along with the original applicant - Digvijay Graha Rachana Mandal. They are further allowed to amend the cause title of the appeal memo and include these names in the appeal memo. This amendment be carried out immediately. Civil application thus stands disposed of

accordingly.

(S.R.SATHE,J.) **(S.B.MHASE, J.)**